

PT 00-30

Tax Type: Property Tax

Issue: Grounds for Burying the Dead

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**HEBREW
BENEVOLENT SOCIETY
OF CHICAGO,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 98-PT-0032
(97-16-1090)
P.I.N: 14-20-104-003**

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Richard H. Marcus, attorney at law, on behalf of the Hebrew Benevolent Society

SYNOPSIS: This proceeding raises the issue of whether real estate identified by Cook County Parcel Index Number 14-20-104-003 (hereinafter the "subject property") qualifies for exemption under 35 ILCS 200/15-45, wherein "[a]ll property used exclusively as graveyards or grounds for burying the dead" are exempted from real estate taxation.

The controversy arises as follows:

The Hebrew Benevolent Society of Chicago (hereinafter the "applicant") filed a Real Estate Exemption with the Cook County Board of Review (hereinafter the "Board") on June 11, 1998. (Dept. Ex. No. 1). The Board reviewed applicant's complaint and

subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be granted. Dept. Ex. No. 2.

The Department rejected this recommendation via a determination dated June 4, 1999. Said determination found that applicant failed to submit sufficient documentary evidence to sustain its exemption complaint. Dept. Ex. No. 4. Specifically, the determination found that applicant did not submit documentation to prove that the subject property had been plotted as a graveyard. *Id.*

Applicant filed a timely appeal to this denial and later presented evidence at a formal evidentiary hearing. Following submission of the evidence compiled at that hearing and a careful review of the record developed thereat, it is recommended that the subject property be exempt from real estate taxes, but only for 27% of the 1997 assessment year.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that applicant did not submit sufficient documentary evidence to sustain its exemption complaint, are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 4.
2. The subject property is located at 3919 N. Clark Street, Chicago, IL 60613 .
3. Applicant, an Illinois not-for-profit corporation, obtained ownership of the subject property via a quitclaim deed dated September 26, 1997. Applicant Ex. Nos. 4, 5.

4. The subject property was plotted for, and had been used as, a not-for-profit cemetery as of the date of conveyance.¹ It continued to be so plotted and used throughout the remainder of the 1997 assessment year. Applicant Ex. Nos. 6, 7, 8.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from real estate taxes, but only for 27% of the 1997 assessment year. Accordingly, under the reasoning given below, the determination by the Department that the subject property did not qualify for such exemption under 35 ILCS 200/15-45 should be partially reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986) Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the

1. Applicant's predecessor in title, the Mount Mayriv-Isaiah Cemetery Association, had been using the subject property as a cemetery as of the date of purchase. Applicant Ex. No. 4, 7, 8.

Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959) Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983)

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 ILCS 200/1-1 *et seq.* The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/15-45, wherein "[a]ll property used exclusively as graveyards or grounds for burying the dead" is exempted from real estate taxation.

Like all statutes exempting property from taxation, Section 15-45 must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Accordingly, applicant bears burden of proving by clear and convincing evidence that the property it is seeking to exempt falls within the appropriate statutory provision. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985)

Here, the Department determined that applicant failed to sustain that aspect of its burden of proof which required it to submit evidence proving that the subject property was plotted for, and actually used as, as a graveyard during the period at issue. *See*, Rosehill Cemetery Company v. Kern, 147 Ill. 483 (1893) (tract plotted for burials but not actually used for internment of the dead during tax year in question held non-exempt). Applicant cured this deficiency by submitting an appropriate plot of graves (Applicant Ex. No. 6) and explanatory evidence in support thereof (Applicant Ex. Nos. 7A, 8; Tr. pp. 12-23) at hearing. Based on this evidence, I conclude that applicant sustained its burden of proof with respect to the exempt use requirement.

This conclusion is nevertheless subject to the pro-ration provisions contained in Section 9-185 of the Property Tax Code, which state, in pertinent part, that:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 **ILCS** 200/9-185.

In this case, the quitclaim deed (Applicant Ex. No. 5) proves that applicant obtained its “right of possession” on September 26, 1997. Therefore, Section 15-185 limits applicant’s exemption claim herein to that 27% of the 1997 assessment year which transpired between September 26, 1997 and December 31, 1997.

WHEREFORE, for all the above-stated reasons, it is my recommendation that: 100% real estate identified by Cook County Parcel Index Number 14-20-104-003 be exempt from real estate taxes for 27% of the 1997 assessment year under Sections 15-45 and 9-185 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

September 19, 2000

Date

Alan I. Marcus
Administrative Law Judge